

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

L.C. CUNNINGHAM,

Plaintiff,

v.

J. PERDROZA, et al.,

Defendants.

1:23-cv-00041-ADA-EPG (PC)

ORDER REGARDING STIPULATION FOR  
DISMISSAL WITH PREJUDICE OF  
DEFENDANT J. PERDROZA ONLY

(ECF No. 41).

Plaintiff L.C. Cunningham is a state prisoner proceeding *pro se* and *in forma pauperis* in a civil rights action filed pursuant to 42 U.S.C. § 1983. (ECF No. 1). On November 17, 2023, Plaintiff submitted a motion requesting that the Court dismiss Defendant J. Perdroza from the case as he believes this Defendant was not involved in the underlying incident.

The Court issued an order (ECF No. 42) on November 20, 2023, noting that it appeared that Plaintiff intended this filing as a notice of voluntary dismissal under Federal Rule of Civil Procedure 41(a)(1)(A)(i); however, that Rule only permits “a notice of dismissal *before* the opposing party serves either an answer or a motion for summary judgment.” (Emphasis added). Because Defendant J. Perdroza had already filed an answer, a notice of voluntary dismissal was inappropriate. (ECF No. 27).

However, the Court noted that Defendants may stipulate to the dismissal under a different provision, Rule 41(a)(1)(A)(ii), which provides for dismissal where there is “a stipulation of dismissal signed by all parties who have appeared.” Accordingly, the Court ordered Defendants to file a signed document reflecting their approval of the dismissal of Defendant J. Perdroza or file a

1 response opposing the dismissal.

2 On November 28, 2023, Defendants filed a signed document stating that “Defendants  
3 agree that Defendant Pedroza should be dismissed from this matter forthwith.” (ECF No. 43).

4 In light of this filing, the parties have stipulated to the dismissal of Defendant Pedroza.<sup>1</sup>  
5 See Fed. R. Civ. P. 41(a)(1)(A)(ii). Accordingly, the Clerk of Court is respectfully directed to  
6 terminate only Defendant Pedroza as a pending defendant on the docket.

7 IT IS SO ORDERED.

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9 Dated: November 29, 2023

/s/ Eric P. Grogan  
UNITED STATES MAGISTRATE JUDGE

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27 <sup>1</sup> The parties have not specified whether the dismissal is with or without prejudice. However, the Court  
28 notes that Rule 41(a)(1)(B) provides as follows: “Unless the notice or stipulation states otherwise, the  
dismissal is without prejudice. But if the plaintiff previously dismissed any federal- or state-court action  
based on or including the same claim, a notice of dismissal operates as an adjudication on the merits.”